

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DONNA J. JONES,

Defendant-Appellant.

UNPUBLISHED

May 16, 1997

No. 188427

Oakland Circuit Court

LC No. 92-120301-24 FH

Before: Corrigan, C.J., and Young and M. J. Talbot*, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to 24 counts of embezzlement by agent over \$100, perpetrated over several years. On prior appeal (Docket No. 165512), this Court affirmed restitution of \$537,432.10 on defendant's appeal, but vacated her probationary sentence on the prosecutor's appeal, opining that the sentence guidelines, which the trial court chose to follow, failed adequately to account for the magnitude of money involved, and thus, the trial court abused its discretion in adhering to the guidelines.

On remand, the sentencing judge recalculated the guideline range at 1 to 3 years on the minimum, as compared with the original calculation of 0 to 9 months, and then sentenced defendant to 4 to 10 years imprisonment on each count, to be served concurrently. She now appeals by right, contending that the trial court abused its discretion by failing to recognize that it had discretion to resentence defendant within the guidelines as rescored. Pursuant to MCR 7.214(E), this case is being decided without oral argument.

On prior appeal, this Court ruled that the sentence guidelines for embezzlement fail to properly account for the magnitude of defendant's peculations in this case, as reflected in contemporaneous affirmance of a restitutionary condition in excess of \$500,000. Neither the amount of defendant's peculations nor the guidelines having changed in the interim, the trial court properly recognized that such inadequacy of the guidelines was the law of the case. *Johnson v White*, 430 Mich 47, 53; 420 NW2d

* Circuit judge, sitting on the Court of Appeals by assignment.

87 (1988). It thus makes no difference whether the guideline range remained the same at the original sentencing or was rescored to a higher range; whatever the guideline range, it fails to account for the magnitude of defendant's wrongdoing. The trial court therefore did not err or fail to recognize its discretion in imposing a sentence slightly above the guideline range. Where the guidelines significantly fail to account for relevant sentencing considerations, it is an abuse of discretion slavishly to follow the guidelines. *People v Houston*, 448 Mich 312, 320-322; 532 NW2d 508 (1995).

Where, prior to imposing sentence, the court advised defendant of her right of allocution, and defendant exercised that right, but was interrupted by a question which prompted a colloquy involving the court and both attorneys, the court's failure to *sua sponte* prompt defendant to continue her statement, absent objection by defendant or defense counsel that more remained to be said, did not deprive defendant of the requisite "reasonable" opportunity to address the court prior to sentencing. *People v Richards*, 95 Mich App 433, 438; 291 NW2d 69 (1980); *People v Berry*, 409 Mich 774, 781; 298 NW2d 434 (1980).

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot